Supreme Court, U.S.
FILED
JUL 27 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-53 (2)

In the Supreme Court of the United States

October Term 1987

RONALD KRILETICH
Petitioner,
vs.
COMMISSION ON JUDICIAL PERFORMANCE, et. al.,
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ALAMEDA, et. al.,
CITY OF HAYWARD, et. al.,
Respondents.

Supplemental Appendix to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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APPENDIX C

RONALD KRILETICH, Plaintiff
v.
COMMISSION OF JUDICIAL PERFORMANCE, et, al.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
ALAMEDA COUNTY, et., al.
CITY OF HAYWARD, et, al.
Defendants

District Case No. C85 5946 TEH

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Argued: November 18, 1985
Entered: November 26, 1985

Before THELTON E. HENDERSON, District Judge

ORDER ON DEFENDANT'S MOTIONS
TO DISMISS AND/OR STRIKE

The Motions to Dismiss and/or to Strike brought by (1) defendants COMMISSION ON JUDICIAL PERFORMANCE, JUSTICE JOHN T. RACANELLI and JACK E. FRANKEL, (2) defendants SUPERIOR COURT IN AND FOR THE COUNTY OF ALAMEDA, JUDGE RICHARD HODGE, JUDGE RAYMOND MARSH, JUDGE JAMES PERLEY, JUDGE MICHAEL BALLACHEY, ROBERT RICH, AGNES HANSON, LINDA COLE, DON CLARK, PAT CLARK, KATHY McKEAN, VICKI DAYBELL, ALICIA F. WILLIAMS and JEROME MOORE, (3) defendants CITY OF HAYWARD, ALEX GIULIANI, DONALD BLUBAUGH, JESUS ARMAS, CHARLES PLUMMER, O. GIULIANI, SERGEANT HARRISON, D. GREGORY, BILL COOK, W.F. COOPER, F. PASCALE and JOHN BEARD, and (4) defendant Kevin D. Flynn, came on regularly for hearing on November 18, 1985, at 10:00 a.m. Thomas F. Bertrand appeared on behalf of City of Hayward and related defendants; Ann Grogan, Deputy Attorney General, appeared on behalf of Commission of Judicial

Performance and related defendants; Anthony S. Petru appeared on behalf of Kevin D. Flynn; and Scott Finch appeared in behalf of the Superior Court of the County of Alameda and related defendants. Plaintiff appeared on his own behalf in propria persona.

Upon consideration of the pleadings, memoranda of points and authorities, affidavits of counsel and oral argument, with the Court fully advised and with good cause appearing therefore,

IT IS HEREBY ORDERED that all Motions to Dismiss and/or to Strike the Complaint filed therein by the aforesaid defendants are granted with prejudice, and that the complaint herein is therefore dismissed.

The grounds for this Order include, but are not limited to, the following:

1. Pursuant to Federal Rules of Civil Procedure rule 8(a)(2), the complaint does not contain a short and plain statement of the claims without redundant, immaterial, impertinent or scandalous matters therein (e.g., *Agnew* v. *Moody* (9th Cir. 1964) 330 F.2d 868).

2. The complaint does not state a claim upon which relief can be granted.

3. Plaintiff lacks standing to bring this lawsuit.

4. Defendants are absolutely immune from suit.

5. Plaintiff has failed to allege sufficient and particular facts rquired to support a claim under either 42 U.S.C. section 1983 or section 1985.

6. Tort claims, if any have been alleged, do not give rise to a civil rights action.

7. Plaintiff has failed to allege any legally-cognizable injury or harm to himself.

8. Plaintiff has failed to plead a justiciable controversy entitling him to declaratory relief.

9. The doctrine of respondent superior is not applicable in civil rights suits under 42 U.S.C. section 1983 or 1985.

10. The complaint does not state facts amounting to a custom or policy of any defendant to encourage or ignore constitutional violations of subordinates, employees or colleagues, nor does the complaint state facts amounting to negligent supervision by any defendant.

11. The Eleventh Amendment prohibits suit against the State of California in federal court, based on claims of violation of federal or state law.

12. The State of California is not a "person" within the meaning of the 42 U.S.C. sections 1983 and 1985.

13. California Rules of Court rule 902(a) does not violate the due process clause of the Fourteenth Amendment, nor does it constitute prior restraint in violation of the First Amendment of the Federal Constitution, nor is it otherwise unconstitutional.

14. California Constitution, article VI, section 8, does not violate the due process clause of the Fourteenth Amendment, nor is it otherwise unconstitutional. All Defendants are awarded their Costs of suit herein.

RONALD KRILETICH, Plaintiff
v.
COMMISSION OF JUDICIAL PERFORMANCE, et, al.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
ALAMEDA COUNTY, et., al.
CITY OF HAYWARD, et, al.
Defendants

District Case No. C85 5946 TEH

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No Hearing or Argument
Filed: December 9, 1985

Before THELTON E. HENDERSON, District Judge

SUPPLEMENT TO ORDER ON DEFENDANTS' MOTIONS TO DISMISS AND/OR STRIKE COMPLAINT

The order heretofore signed and filed dismissing and/or striking the complaint as to defendants SUPERIOR COURT IN AND FOR THE COUNTY OF ALAMEDA, JUDGE RICHARD HODGE, JUDGE RAYMOND MARSH, JUDGE JAMES PERLEY, JUDGE MICHAEL BELLACHEY, ROBERT RICH, JEROME MOORE, AGNES HANSON, LINDA COLE, DON CLARK, PAT CLARK, KATHY McKEAN, VICKI DAYBELL and ALICIA F. WILLIAMS is hereby supplemented to add a further ground upon which the order is based.

The following shall be added to the order at page 4, line 6:

15. This court feels restrained by the principles of equity, comity, and federalism from litigating plaintiff's claims (e.g. *Landi* v. *Phelps* (9th Cir. 1984) 740 F.2d 710).

RONALD KRILETICH, Plaintiff
v.
COMMISSION OF JUDICIAL PERFORMANCE, et, al.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
ALAMEDA COUNTY, et., al.
CITY OF HAYWARD, et, al.
Defendants

District Case No. C85 5946 TEH

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No Hearing or Argument
Entered: January 22, 1986

Before THELTON E. HENDERSON, District Judge

ORDER

This matter comes before the Court on plaintiff's motions: (1) for leave to file an amended complaint; (2) to alter or amend judgment; (3) to compel defendants to serve all papers onto all parties including real parties in interest; (4) for an Order directing an answer to the first amended complaint; (5) to declare void the suplemental Order on defendants' motion to dismiss and/or strike complaint; (6) for contempt. For the reasons stated in this Order, the Court denies all of these motions.

On November 25, 1985, this Court issued an Order dismissing all defendants and striking the complaint. This Order listed 14 grounds justifying the Court's finding. On December 5, 1985, this Court issued a supplemental Order adding another ground for dismissal. The Court has not yet issued an Order of Judgment in this case.

On December 18, 1985, plaintiff appeared in Court for a status conference which the Court had scheduled at the time the original complaint was filed. As the Court had dismissed all of the defendants, none of them appeared for the status conference. Plaintiff now asks the Court to find defendants in contempt for failure to appear. Having considered the matter carefull;y, the Court

finds defendants were not at fault for failure to appear for a case in which they had been dismissed. Therefore, plaintiff's motion for contempt is DENIED.

On December 4, 1985, plaintiff filed a motion for leave to file an amended complaint. On December 13, 1985, plaintiff filed a motion asking the Court to order defendants to answer the amended complaint. After reviewing the proposed amended complaint, the Court finds that it raises basically the same issues raised in the original complaint. Therefore, for the reasons stated in the Court's Orders of November 25 and December 9, the Court hereby DENIES plaintiff's request to file an amended complaint. The Court also hereby DENIES plaintiff's motion to compel the filing of answers to the amended complaint.

Plaintiff has also asked the Court to alter or amend its original order of dismissal and to declare void the supplemental order of dismissal. The Court declines to change these Orders in any way. The Court issued these Orders after much deliberation and after affording plaintiff a lengthy appearance before the Court. Plaintiff is concerned that the Court issued a supplemental Order without giving him a chance to brief the Court. This supplemental Order merely added another ground for dismissal. The Court based this supplemental Order on its own legal research and on the briefs and oral arguments offered to the Court for the November 18, 1985 hearing. Plaintiff had ample opportunity to participate in this process. Furthermore, the Court has full authority to expand one of its Orders before judgment is entered or an appeal filed. Plaintiff is also concerned that the Court did not set rule on his motion to strike insufficient defenses; since the Court dismissed plaintiff's complaint in its entirety, the motion to strike insufficient defenses was moot. For these reasons, the Court hereby DENIES plaintiff's motions to alter the judgment and to declare void the supplemental Order.

Plaintiff also asks the Court to compel defendants to serve all papers onto all parties including the real parties in interest. As the Court has dismissed all defendants from the suit, and is issuing a judgment in this case on this date, there is no need to order defendants to serve papers on a case which is terminated. Therefore, the Court DENIES plaintiff's motion to compel service.

Plaintiff has indicated he is not satisfied with the conclusions reached by the Court in this case. If so, plaintiff should pursue this

action in the Court of Appeals. Plaintiff should no longer file any papers with this Court. He has consumed a great deal of the Court's time with what have ultimately proved to be frivilous motions.

Therefore, IT IS HEREBY ORDERED that the Clerk of the Court shall not file any additional plaeding or document of Mr. Kriletich. Such pleadings and documents shall be lodged with the Clerk and shall be considered by any Judge of the Northern District and then filed only if they are found to have merit.

IT IS THEREFORE ORDERED that the hearing scheduled for January 27, 1986 before the Court is cancelled and no further issues remain to be resolved in district court.

IT IS SO ORDERED.

RONALD KRILETICH, Plaintiff
v.
COMMISSION OF JUDICIAL PERFORMANCE, et, al.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
ALAMEDA COUNTY, et., al.
CITY OF HAYWARD, et, al.
Defendants

District Case No. C85 5946 TEH

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No Hearing or Argument
Entered: January 22, 1986

Before THELTON E. HENDERSON, District Judge

JUDGMENT DISMISSING COMPLAINT

The motions of:

1. Defendants Commission on Judicial Performance, Justice John T. Racanelli and Jack E. Frankel,

2. Defendants Superior Court in and for the County of Alameda, Judge Richard Hodge, Judge Raymond Marsh, Judge James Perley, Judge Michael Ballachey, Robert Rich, Agnes Hanson, Linda Cole, Don Clark, Pat Clark, Kathy McKean, Vicki Daybell, Alicia F. Williams and Jerome Moore,

3. Defendants City of Hayward, Alex Giuliani, Donald Blubaugh, Jesus Armas, Charles Plummer, O. Giuliani, Sergeant Harrison, D. Gregory, Bill Cook, W.F. Cooper, F. Pascale and John Beard, and

4. Defendant Kevin D. Flynn

To strike and/or dismiss plaintiff's complaint having been granted by order signed November 25, 1985 and supplemental order signed December 12, 1985,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complaint herein be, and it is, dismissed as to all above named defendants, and that said defendants shall recover judgment against pliantiff for their costs of suit.